

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of new	)	NOTICE OF ADOPTION,
Rules I through XLI, the amendment of	)	AMENDMENT, AND REPEAL
37.37.316 and 37.37.318, and the	)	
repeal of ARM 37.97.1001, 37.97.1002,	)	
37.97.1006, 37.97.1011, 37.97.1013,	)	
37.97.1014, 37.97.1016, 37.97.1018,	)	
and 37.97.1019 pertaining to youth	)	
foster homes	)	

TO: All Interested Persons

1. On December 8, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-360 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 2379 of the 2005 Montana Administrative Register, issue number 23, and on February 23, 2006, published MAR Notice No. 37-372 pertaining to the notice of extension of comment period on proposed adoption, amendment, and repeal of the above-stated rules, at page 524 of the 2006 Montana Administrative Register, issue number 4.

2. The department has adopted new RULE I (37.51.101), RULE II (37.51.102), RULE III (37.51.201), RULE IV (37.51.202), RULE VI (37.51.207), RULE VII (37.51.208), RULE VIII (37.51.209), RULE IX (37.51.210), RULE XII (37.51.217), RULE XIII (37.51.601), RULE XIV (37.51.602), RULE XV (37.51.607), RULE XVI (37.51.608), RULE XVII (37.51.609), RULE XVIII (37.51.301), RULE XIX (37.51.305), RULE XX (37.51.306), RULE XXI (37.51.307), RULE XXIII (37.51.311), RULE XXIV (37.51.801), RULE XXV (37.51.802), RULE XXVI (37.51.805), RULE XXVII (37.51.806), RULE XXIX (37.51.815), RULE XXX (37.51.816), RULE XXXI (37.51.820), RULE XXXII (37.51.603), RULE XXXVII (37.51.1001), XXXVIII (37.51.1401), RULE XXXIX (37.51.1404), and RULE XL (37.51.1405) as proposed.

3. The department has amended ARM 37.37.316 and 37.37.318, and repealed ARM 37.97.1001, 37.97.1002, 37.97.1006, 37.97.1011, 37.97.1013, 37.97.1014, 37.97.1016, 37.97.1018, and 37.97.1019 as proposed.

4. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE V (37.51.203) YOUTH FOSTER HOMES: LICENSURE AND RENEWAL (1) remains as proposed.

(2) For placement made on or after ~~[effective date]~~ June 2, 2006, the number of children for whom a ~~kinship~~ foster home is licensed will be based in part on the number of children already residing in the home. There shall be a maximum of

seven children residing in a ~~kinship~~ foster home at any one time unless an exception is made by the regional administrator to ~~accommodate placement of a sibling group~~.  
(3) through (4) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA  
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE X (37.51.216) YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION (1) The department, through written notice to the applicant or licensee, shall deny, revoke, or restrict a license upon finding that:

(a) the applicant, licensee, or member of the applicant's or licensee's household, ~~or anyone living on the foster home property~~ has a conviction for a serious crime, such as but not limited to homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;

(b) the applicant, licensee, or member of the applicant's or licensee's household, ~~or anyone living on the foster home property~~ has a conviction for a crime pertaining to children or families, including but not limited to child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact; or

(c) the applicant, licensee, or member of the applicant's or licensee's household, ~~or anyone living on the foster home property~~ has within the previous five years had a felony conviction for a drug related offense, including but not limited to use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs; or

(d) the applicant, licensee, or member of the applicant's or licensee's household, ~~or anyone living on the foster home property~~ has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(2) The department, through written notice to the applicant or licensee, may deny, suspend, restrict, or revoke a license upon a finding that:

(a) the applicant, licensee, or member of the licensee's household ~~or anyone residing on the foster home property~~ has a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, or a crime involving an abuse of the public trust;

(b) through (h) remain as proposed.

(i) the foster parents or anyone living in the foster home ~~or on foster home property~~ may pose any risk or threat to the safety or welfare of a child placed in the foster home.

(3) and (4) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA  
IMP: 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XI (37.51.218) YOUTH FOSTER HOMES: REMOVAL OF A CHILD

(1) The department, after providing the foster home with notice, may ~~immediately~~ remove a child in the care or custody of the department from a foster home at any time it determines that another placement is more appropriate, ~~or that~~ The department may immediately remove any foster child if there is a need to protect the child from possible harm.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA  
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXII (37.51.310) YOUTH FOSTER HOMES: CRIMINAL

BACKGROUND CHECKS (1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each person living in the household, ~~or on the foster home property.~~

(2) remains as proposed.

(3) If a new applicant who has lived only in Montana cannot be successfully fingerprinted or if two fingerprint cards cannot be successfully read by the Department of Justice, a Montana name-based criminal records check will be used for applicants who have not lived in a state other than Montana.

(4) If an applicant who has lived in states other than Montana cannot be successfully fingerprinted, or if two fingerprint cards cannot be successfully read by the Department of Justice, a Montana name-based criminal records check will be completed, and:

(a) through (c) remain as proposed.

(5) An annual name-based criminal records check and a motor vehicle check for licensed foster parents are required for relicensure.

(6) through (9) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA  
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXVIII (37.51.810) YOUTH FOSTER HOMES: CHILD CLOTHING

(1) through (3) remain as proposed.

(4) The foster parent shall inventory the child's clothing and other possessions when the child is placed in the foster home and ~~again at the time of discharge from the foster home~~ maintain the inventory throughout the time the child is in the foster home.

(a) remains as proposed.

(b) All clothing or other items that are outgrown, worn out, or missing shall be noted on the inventory list; however, no clothing or other possessions that came with the child from the child's home shall be disposed of without approval from the child's social worker;

~~(b)~~ (c) All of the child's current clothing and other possessions shall be sent with the child to any subsequent placement, including a return to the child's home;

~~(e)~~ (d) Foster parents shall record the cost of clothing on the inventory list when the clothing is purchased with funds from the maintenance payment and shall maintain receipts for clothing purchased with funds provided by the department specifically provided to purchase clothing for the child; and

~~(d)~~ (e) Foster parents shall provide the clothing receipts and the inventory list at any time upon request of the department and shall provide the receipts and inventory list to the child's social worker when the child leaves the foster home.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXXII (37.51.603) YOUTH FOSTER HOMES: THERAPEUTIC FOSTER HOMES (1) Therapeutic foster parents must meet all requirements for regular foster parents set forth in this rule, the requirements set forth in ARM 37.37.101, et seq., and the additional requirements in this rule and ~~[Rule XLII]~~ [Rule XLI] ARM 37.51.1403.

(2) through (9)(d) remain as proposed.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, 52-2-666, MCA

RULE XXXIII (37.51.825) YOUTH FOSTER HOMES: PHYSICAL CARE OF CHILDREN (1) through (3) remain the same.

(4) The foster parents, in consultation with the placing ~~worker~~ agency, shall arrange for each child to have a complete early periodic screening, diagnosis, and treatment (EPSDT) well child examination which includes a medical, dental, vision, and hearing screen within 30 days of placement in foster care. Subsequent examinations and treatment must be completed ~~yearly thereafter unless more frequent examinations are~~ as recommended by the child's physician.

~~(5) A child two years of age or older who has not had a dental examination within a year prior to placement in foster care shall have one within 90 days after admission. Reexamination shall be done at least annually unless more frequent examinations are recommended by the child's dentist.~~

(6) through (9) remain as proposed but are renumbered (5) through (8).

~~(10) (9) All children residing in the home under 12 years of age~~ The foster parents must work with the placing agency to ensure that each foster child shall be is immunized in accordance with ARM 37.51.306 and 37.51.307. Any child with a history of measles is considered immunized against measles.

~~(11) The medical and immunization history of the child will be recorded on forms provided by the department and kept on file in both the foster home and the placing agency.~~

(12) through (16) remain as proposed but are renumbered (10) through (14).

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXXIV (37.51.826) YOUTH FOSTER HOMES: DISCIPLINE

(1) remains as proposed.

(2) The foster parents shall not use spanking or other forms of physical punishment ~~or any other disciplinary technique which is humiliating, shaming, cruel, capricious, frightening, or otherwise damaging to a child.~~

(3) The foster parents shall not use any other disciplinary technique which is humiliating, shaming, cruel, capricious, frightening, or otherwise damaging to a child.

(4) through (10) remain as proposed but are renumbered (5) through (11).

~~(3)~~ (4) No child in care shall be subjected to any form of abuse.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, 52-2-622, MCA

RULE XXXV (37.51.901) YOUTH FOSTER HOMES: ENVIRONMENTAL AND SAFETY REQUIREMENTS (1) through (5) remain as proposed.

(6) The foster parents must protect any foster child from any ~~threat~~ environmental danger or other hazard on the foster care property that the foster parent is aware of and that could affect the to a child's health, welfare, or safety of children in care. in the neighborhood that t ~~The foster parent is aware and~~ must notify the licensing worker of the concern.

(7) and (8) remain as proposed.

(9) If the home's water supply is not from a municipal system, the foster home must arrange to, at a minimum, have a basic screen water test conducted at least annually through the Department of Public Health and Human Services, Public Health and Safety Division, Laboratory Services Bureau, Environmental Laboratory Section, Cogswell Building, 1400 Broadway, Room B-204, Helena, Montana 59620 to ensure that the water supply remains safe for human consumption. Documentation of the test results must be provided to the licensing worker. If a home's water supply is obtained from an approved source, but the water is stored in a cistern, it is recommended that a basic screen water test be conducted each time the water is replaced and the results provided to the licensing worker.

(10) Children shall not be exposed to ~~paint containing lead in excess of .06% unsafe levels of lead as determined by the Environmental Protection Agency.~~

(11) remains as proposed.

(12) Any pet or animal present at the home with the foster parents' permission shall not pose a threat to the safety or well being of any child placed in the home.

(a) and (b) remain as proposed.

(c) Foster parents are ~~legally and financially~~ responsible for their negligent actions and any resulting injuries that may be caused by any animal allowed in or around the foster home.

(13) through (15) remain as proposed.

(16) The foster parents shall make swimming and wading pools, ~~and~~ swimming areas, and hot tubs inaccessible to children except when directly supervised by a responsible adult.

(17) Foster children in the care or custody of the department may not

participate in high risk activities including, but not limited to hunting, snowmobiling, four-wheeling, or rock climbing without written consent of the licensing supervisor department community social worker supervisor for the child and, who will determine if consent from where appropriate, the birth parents is needed. Foster parents caring for a child who is not in the care or custody of the department must work with the agency responsible for the child to ensure that permission to participate in high risk activities is obtained.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA  
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XXXVI (37.51.902) YOUTH FOSTER HOMES: FIRE SAFETY REQUIREMENTS (1) through (3) remain as proposed.

(4) Each foster home in which fuel burning heat or appliances are used must have at least one carbon monoxide detector installed in the home.

(4) through (8) remain as proposed but are renumbered (5) through (9).

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA  
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

RULE XLI (37.51.1410) YOUTH FOSTER HOMES: REQUIRED TRAINING FOR THERAPEUTIC FOSTER HOMES (1) remains as proposed.

(2) Each year thereafter, therapeutic foster parents must ~~each~~ complete a total of 30 hours of annual training that may include training in the general areas identified in ARM 37.51.1403(2), but which must also include a minimum of 15 hours of training directly related to:

(a) and (b) remain as proposed.

(3) Each therapeutic foster parent in a two parent foster home must complete at least five hours of training directly related to (2)(a) and (b).

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA  
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

5. The department has corrected a typographical error from the published notice in Rule XXXII (1)(37.51.603) from Rule XVII to Rule XLI (37.51.1403) so that the rule now will accurately cross reference the other rule cited. There was not a Rule XLII proposed in the proposal notice.

6. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

RULE V (37.51.203) YOUTH FOSTER HOMES: LICENSURE AND RENEWAL

COMMENT #1: Rule V (37.51.203) should be changed so that no exception is allowed for kinship care unless all of the children are from one family. Taking several different family members' children into the same house is not any safer than for regular foster care homes. One set of foster parents cannot care for more than

six to seven children if more than two are foster children because they need so much care and time. Allowing a kinship home to keep too many children jeopardizes the ability to provide adequate care to all of the children.

RESPONSE: The word "kinship" was inadvertently included in this rule. Notice of the error and the correction was provided at the public hearing on January 5, 2006 and through MAR Notice Number 37-372 which appeared on page 524, issue No. 4 of the 2006 Montana Administrative Register. The original intent of the rule was that it would apply to all foster homes and the rule has been amended to reflect that position.

COMMENT #2: A maximum of seven children is too few children. There are foster families capable of effectively handling more than seven children.

RESPONSE: The department agrees that although rare, there are some families who are capable of caring for more than seven children. The rule is being amended to allow the regional administrator to make an exception to the limit of seven without requiring that exception be to accommodate placement of a sibling group.

COMMENT #3: There should be no limit on the number of children residing in the home. The number of children in the home should not be limited by the state. If there is a limit, the limit should be decided by the local licensing worker or local staff.

RESPONSE: The department continues to believe that the ability to limit the number of children in a foster home is necessary to ensure that the needs of all children in the home be appropriately met. Allowing local licensing worker or other staff to make the decision would result in too much inconsistency. The regional administrator should have the responsibility of deciding when an exception should be made so this language has been retained in the rule. The licensing worker will have the responsibility of justifying to the regional administrator why an exception should be made.

COMMENT #4: What are the age limits? Is it any youth 18 or younger or can older teens be exempted?

RESPONSE: The rule applies to all children under age 18 and does not provide for an exemption for older teens.

COMMENT #5: The rule should be amended to allow the regional administrator to make an exception to the limit on the number of children. An exception by the regional administrator will require justification and proof that the family is capable for caring for more children.

RESPONSE: The department concurs and is amending the rule to allow exceptions to the limit of a total of seven children for reasons other than to accommodate placement of a sibling group.

#### RULE IX (37.51.210) YOUTH FOSTER HOMES: GRANTING LICENSURE EXCEPTIONS

COMMENT #6: In Rule IX (37.51.210), either the regional administrator or a designee should be allowed to grant an exception to issuance of a license to a person whose child has been in foster care.

RESPONSE: The department's position is that the regional administrator is the appropriate person to make this exception. The rule remains as proposed.

#### RULE X (37.51.216) YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION

COMMENT #7: Meth is a big problem in Montana and Rule X(1)(a) and (b) (37.51.216) is a problem. Five years is not sufficient time before allowing a person who was convicted of a drug related offense to be able to become licensed as a foster parent. The rule should be changed to at least 10 years to ensure protection of a foster child especially when there are some other offenses that would prevent you from ever becoming a foster parent. Can this be made stricter than the federal requirements?

RESPONSE: Rule X (37.51.216) addresses the action that the department may take upon learning that an applicant or licensee has criminal history as described in this rule. Rule X (37.51.216)(1)(c) specifically addresses the negative licensing action that the department may take when the criminal history is specific to a drug related offense. The rule provides the department with authority to assess and utilize an applicant's or licensee's criminal history in negative licensing actions and does not, in any way, require that the department must license an applicant who has a meth related drug offense simply because the offense is more than five years old. The department does not believe it is necessary to adopt language that is stricter than the federal requirement.

COMMENT #8: In Rule X (37.51.216), what is considered to be "the foster home property"? What if the applicant is not the property owner? What if they live in a townhouse, condo, or apartment building? Is this a violation of other renters and homeowner's rights? How do providers obtain a release of information from these individuals who are not members of the applicant's household? Do we have to check all minors on the property? What if the applicant or foster parent owns a trailer court and lives in the trailer court?

RESPONSE: This rule was intended to require background checks on other people living on property owned by the applicant or foster parent, such as a basement apartment. The "foster home property" language elicited many comments which made it clear that, even if limited to property owned by the foster parents, the language was problematic in particular situations. For example, if a foster family owned and operated a campground where individuals can pay fees to stay on the property, either short term or long term, it would be impossible to conduct background checks on all guests. That would also be true if the foster family owned



and operated any other type of overnight accommodations on their property. Therefore, the department is deleting the phrase "or anyone living on the foster home property" from the rule.

RULE XI (37.51.218) YOUTH FOSTER HOMES: REMOVAL OF A CHILD

COMMENT #9: Rule XI (37.51.218) should have language that requires regional administrator approval.

RESPONSE: The department does not believe that regional administrator approval is warranted or necessary given the language changes made to Rule XI (37.51.218), so that language is not being added.

COMMENT #10: Rule XI (37.51.218) allows removal at any time day or night based on a more appropriate placement, the appropriateness being determined by an unspecified process or person. This can be emotionally damaging as well as extremely disruptive to the child and foster family. Removing "that another placement is more appropriate" from this rule makes it fair and reasonable.

RESPONSE: The department does not agree that the rule as proposed is unfair or unreasonable. However, the department has amended the rule to require notification to foster parents when a child in the department's care or custody is being moved to a more appropriate placement.

RULE XIV (37.51.602) YOUTH FOSTER HOMES: REPORTS OF CHANGE IN COMPOSITION OF FOSTER HOME

COMMENT #11: Some foster parents take in foreign exchange students. What constitutes adequate documentation of a background check on these students when it cannot be obtained from the other country?

RESPONSE: Background checks generally mean a criminal and CPS check, and these checks are not routinely conducted nor are they required for minors. If a foster family has or wants to accept placement of a minor foreign exchange student, the family will be expected to provide sufficient information regarding the exchange student to the licensing worker to allow for an assessment of the potential impact of the exchange student on foster children that are or may be placed in the foster home. The licensing worker must provide written justification regarding placement of the exchange student to the licensing supervisor.

COMMENT #12: Other than a personal statement of health, what records are we required to obtain from the foreign exchange student's placing agency?

RESPONSE: Licensing workers, through the foster family, should attempt to obtain all available information on the exchange student. Any agency worker conducting a licensing study must obtain sufficient information regarding the student to assess the ability of the foster parents to meet the needs of children already in the home. The

licensing worker must be able to provide a written recommendation to the licensing supervisor along with supporting documentation if a change in the license is being recommended.

COMMENT #13: Do the changes in employment notification requirements include promotions or changes in the company the foster parent works for?

RESPONSE: Any changes in employment are to be reported.

COMMENT #14: Why are there so many different timelines regarding changes in household composition?

RESPONSE: There are different timelines because the potential impact on foster children in the home and on the foster home license differs depending on the specific change. For example, foster parents are required to report a planned move at least 30 days in advance so an inspection of the new residence can be scheduled as soon as possible. A foster home license does not transfer from one residence to another (some licensing requirements are specific to the residence) so a prompt assessment of the new residence is necessary.

#### RULE XV (37.51.607) YOUTH FOSTER HOMES: REPORTS OF SUSPECTED CHILD ABUSE OR NEGLECT

COMMENT #15: Does Rule XV (37.51.607) require foster parents to "report any incident of known or suspected child abuse or neglect of any child" or only children placed in the family?

RESPONSE: Foster parents are required to report any suspected abuse or neglect involving any child. The reporting requirements are not limited to children placed in the foster home.

#### RULE XVI (37.51.608) YOUTH FOSTER HOMES: REPORTS OF SERIOUS INCIDENTS AND THREATS

COMMENT #16: What constitutes a serious incident as referenced in Rule XVI (37.51.608)? What if a foster parent believes that something is not a serious incident, but a social worker does. I consider a runaway a serious incident, but that does not have to be reported until the next working day. I would also consider a discipline violation a serious incident, but we are given 48 hours to report that.

RESPONSE: "Serious incident" is defined in Rule II (37.51.102). Foster parents should not wait to report anything that the foster parent considers to be a serious incident. If a foster parent and a social worker disagree as to whether something should have been reported, the licensing worker is responsible for determining if a licensing violation occurred.

#### RULE XVIII (37.51.301) YOUTH FOSTER HOMES; GENERAL REQUIREMENTS

## FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS

COMMENT #17: Can good moral character in Rule XVIII (37.51.301) be used in negative licensing action?

RESPONSE: Good moral character can be used in negative licensing action. Foster parents are required by rule to be of good moral character. The Montana Supreme Court has held that "good moral character" is defined in state law as a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

## RULE XIX (37.51.305) YOUTH FOSTER HOMES: HEALTH VERIFICATION REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS

COMMENT #18: The timeframe for health verification (personal statement of health in Rule XIX) (37.51.305) should be changed from two weeks to four weeks.

RESPONSE: The department's position is that four weeks is too long to wait for the information contained in a personal statement of health from a person residing in a foster home. The rule will remain as proposed.

## RULE XX (37.51.306) YOUTH FOSTER HOMES: PRESCHOOL AGE CHILD IMMUNIZATION REQUIREMENTS AND RULE XXI (37.51.307) YOUTH FOSTER HOMES: SCHOOL AGED CHILD IMMUNIZATION REQUIREMENTS

COMMENT #19: Are all of the required immunizations Rule XX (37.51.306) and XXI (37.51.307) on the blue immunization form that foster parents are asked to complete? Is it correct that foster parents are asked to fill the form out and licensing staff just verifies that it is complete?

RESPONSE: There is space for all of the immunizations listed in the rules to be entered on the (blue) current State of Montana - Certificate of Immunizations Form. If foster parents choose to use the immunization form it should be completed by a health department or health care provider, or by a school or day care official who certifies that the information has been transferred from acceptable documentation of the immunizations. Foster parents should not be completing the form themselves and submitting it to the department. Under the proposed rule, a foster parent is not required to submit the Certificate of Immunizations Form, but may submit other forms of documentation.

Licensing staff must review each immunization form or other immunization documentation that is submitted to ensure that a child has received immunizations appropriate for his age.

COMMENT #20: Do Rules XX (37.51.306) and XXI (37.51.307) apply to children placed in a foster home? If the foster child's birth parent has an exemption for the

child's immunizations, how does this impact the license of the foster home where the child is placed?

RESPONSE: The immunizations required by Rules XX (37.51.306) and XXI (37.51.307) do apply to children placed in the foster home as clarified in Rule XXXIII(9) (37.51.825), as amended. If the foster child's birth parent has an exemption for the child's immunizations, the social worker should obtain legal advice regarding the exemption and any action to be taken. The immunizations or lack of immunizations of a foster child in this circumstance will have no impact on the license of the foster parents with whom the child is placed.

COMMENT #21: If a family does not immunize their own children due to religious convictions, can they still be licensed? If so, what documentation is required?

RESPONSE: A family whose children are not immunized cannot be licensed as a youth foster home. There is no exemption provision regarding immunizations for children residing in a foster home in the current youth foster home licensing rules and none proposed under these rules.

COMMENT #22: It is our understanding that Montana state law allows a religious exemption for a child who is not immunized to attend public school. Yet we are being told that there is no such exemption for the foster/adoption requirements that would allow us to open our home to children needing a stable and loving home. We find it very troubling that because our child's lack of immunizations we can never be allowed to foster or adopt children, yet we see from Rule IX (37.51.210) that a person who has been convicted of abuse, sexual abuse, or neglect can receive a foster home license. How can that happen? This is not right! It is our strong belief, based upon other Montana state laws as well as the first amendment of the United States Constitution that the new proposed Rules XX (37.51.306) and XXI (37.51.307) regarding youth foster homes and immunization requirements should allow for an exemption. Please review this matter and change this rule to better fit the rights and freedoms allowed by our state and country.

RESPONSE: A family whose children are not immunized cannot be licensed as a youth foster home under the current and proposed rules. While education is a mandatory requirement for all school-aged children, there is no requirement to serve as a foster parent and no entitlement to a foster care license. Children who are placed in foster care often have had their health neglected and are at greater risk for health problems than children in the general population. The department has a responsibility to protect the health and safety of children who are placed in foster care, as well as the health and safety of children residing in the foster home. The risks of placing children in homes where there are children who are not immunized are too great.

Rule IX (37.51.210) does allow the regional administrator to consider individual circumstances in determining that a restricted license (a license issued for the care of a specific child or children) may be issued to a person who has an abuse or

neglect substantiation of a child or a conviction of abuse, neglect, or exploitation of an elderly person or a person with developmental disability. The exception is rarely used and is most often used in kinship situations. For example, a person may have had problems with alcohol abuse in their early twenties and neglect of the person's children was substantiated. At age 60, after years of sobriety and no further substantiations, if this person applies to become a kinship foster parent for a grandchild, it may be appropriate to make an exception and license the grandparent.

COMMENT #23: Rule XXI (37.51.307) sounds more like the imposition of socialist ideas upon the foster home which the state does not have the right to do. With recent information regarding some immunizations being in some cases detrimental to their very lives, it must remain the foster parent's right to choose whether or not they want their own children to be immunized.

RESPONSE: It is the right of a parent to choose whether to immunize his or her child. However, if this parent applies to become a youth foster parent, the application will be denied because there is no exemption allowed to the immunization requirements for the same reasons as are contained in the response to Comment #21.

#### RULE XXII (37.51.310) YOUTH FOSTER HOMES: CRIMINAL BACKGROUND CHECKS

COMMENT #24: Rule XXII (37.51.310) no longer excludes minors under the age of 18. Do child placing agencies complete name-based checks on all minors? If yes, are they processed the same way?

RESPONSE: Name-based criminal history checks are not required for minors. Unless a minor has been charged as an adult, there would be no criminal history that could be obtained from a name-based check. However, licensing staff should request information from the applicant regarding anyone in the household, including a minor, who is under court supervision or treatment as a result of a violent, sexual or drug related crime even if the minor was not charged with a crime.

COMMENT #25: What if the applicant is not the property owner? What if they live in a townhouse, condo or apartment building? Is Rule XXII (37.51.310) a violation of other renters or homeowner's rights? If I have acreage and have rentals on that acreage, my tenants should not have to forfeit their privacy to accommodate the department. How do providers obtain a release of information from individuals who are not a member of the applicant's household? Do we have to check all minors on the property also?

RESPONSE: The department is deleting the phrase "or anyone living on the foster home property" in Rule XXII (37.51.310).

COMMENT #26: Criminal background checks are costs assumed by the provider. This rule adds additional costs to the child placing agency. Will there be an increase

in therapeutic foster care room and board rates to offset these costs?

RESPONSE: There will be no additional costs for criminal background checks as a result of adopting the rule as it is being amended since background checks are currently required on all adults in the home. There will be no increase in board rates as a result of the adoption of this rule.

COMMENT #27: For persons who have been former foster parents and are reapplying, are they required to be fingerprinted again or can the original fingerprints be used and named-based checks be completed?

RESPONSE: If a former foster parent has not been licensed for more than one year or if a former foster parent has lived out-of-state for any period of time, the person will be treated as a new applicant. A new applicant is required to have a fingerprint based criminal records check.

COMMENT #28: The logistics of retrieving this (child protective services) information will be difficult, particularly with older families with adult children. The rule will be difficult to enforce.

RESPONSE: The department does not agree that this rule will be difficult to enforce. Applicants are already expected to provide information regarding every place they have lived after the age of 18. The rule does not require that child protective services information must be obtained from every state in which the applicant has lived since this is not always feasible, however information does need to be requested from every state in which an applicant has resided.

#### RULE XXIII (37.51.311) YOUTH FOSTER HOMES: PSYCHOLOGICAL AND MEDICAL EXAMINATIONS

COMMENT #29: In Rule XXIII (37.51.311), do child placing agencies request psychological and medical examinations or do we ask the department to request them? Who pays for these examinations? Is it different before they are licensed vs. after they are licensed?

RESPONSE: Either the child placing agency or the department may request a psychological evaluation or medical examination. If a child placing agency identifies concerns with one or more family members when assessing a foster home for licensure, the child placing agency may make the request of the family. If concerns arise with a family that is already licensed, the child placing agency should notify the responsible licensing supervisor and work with the supervisor to determine who will make the request. The applicant or foster parent is responsible for the cost of the evaluation or examination although the child placing agency or department may choose to cover the cost.

COMMENT #30: Are our rights to privacy given up because we became foster parents? If I have a mental issue which is not detrimental to the health and well

being of a foster child in our home and I seek help for this, does this mean I lose my rights to privacy? Unheard of!

RESPONSE: The department has a right to request medical or psychological information that the department determines is necessary to assess the suitability of an applicant or a foster parent. The applicant or foster parent must sign a release before information will be released to the department. The applicant or foster parent may refuse to obtain an examination or refuse to allow information to be released to the department, however doing so may result in negative licensing action.

#### RULE XXIV (37.51.801) YOUTH FOSTER HOMES: GENERAL PROGRAM REQUIREMENTS

COMMENT #31: In Rule XXIV (37.51.801), what type of documentation will be required by child placing agencies and therapeutic foster homes for accounting of allowances, earning, gifts, or other financial resources made available to the child?

RESPONSE: By contract, child placing agencies are required to:

"...segregate the personal accounts of all youth receiving the Contractor's services under this (therapeutic foster care) contract and to account for these funds accurately and separately from the Contractor's regular accounts. Personal expenditures for or by each youth will be recorded with documentation in the youth's account, to minimally include for each transaction the date, the amount of the transaction, balance and must be initiated by the staff and youth. When a youth's account exceeds \$50.00, the Contractor agrees to send the placing professional (who has financial responsibility for the youth) monthly statements that minimally include the debits, credits, and balance for each youth's personal account. The monthly statement should be attached to the corresponding monthly progress report and a final statement will be submitted with the discharge summary."

This rule does not impact the contract requirements for child placing agencies.

Under current rule, foster parents are required to account for money earned by a child or received as a gift or an allowance separately from foster home funds and this rule maintains that requirement. At a minimum, documentation should include the date, the source of funds added to the account or the reason for the expenditure and the balance.

#### RULE XXV (37.51.802) YOUTH FOSTER HOMES: COOPERATION OF FOSTER PARENTS

COMMENT #32: Does Rule XXV (37.51.802) include extended family such as grandparents?

RESPONSE: The child's social worker is responsible for identifying with whom the child should have visits. If the child is to have visits with grandparents, the foster

parent must permit and encourage such visits.

RULE XXVI (37.51.805) YOUTH FOSTER HOMES: CHILD EDUCATION AND TRAINING

COMMENT #33: Does Rule XXVI (37.51.805) apply only to youth in foster care? There are foster homes that home school their own children. Should this say school age children?

RESPONSE: This rule applies only to foster children. A foster parent is entitled to make the decisions regarding school attendance for the foster parent's children. Adding school age to the rule is unnecessary.

RULE XXVII (37.51.806) YOUTH FOSTER HOMES: CHILD RELIGIOUS AND CULTURAL EXPRESSION

COMMENT #34: In Rule XXVII (37.51.806), take out the language giving the birth parents the right to say or demand that we take the children to their church unless it is reasonable and the parent has been regularly attending the church they are expecting the foster parents to attend.

RESPONSE: This rule does not say or demand that foster parents must take the children to the church the parent has requested. The rule requires that the foster parent allow the child to attend available services in the community. Foster parents must work cooperatively with the social worker, the birth parent, and the child to allow the foster child to participate in religious activities.

RULE XXVIII (37.51.810) YOUTH FOSTER HOMES: CHILD CLOTHING

COMMENT #35: Therapeutic foster parents generally do not receive clothing allowances in addition to their stipend, but a portion of their stipend is required to be used for clothing. Under Rule XXVIII (37.51.810) are child placing agencies and therapeutic foster homes required to keep receipts and submit them to the placing worker at discharge? If the receipts demonstrate that the foster family has spent more than their stipend, will they be reimbursed?

RESPONSE: The department is amending Rule XXVIII (37.51.810) to limit the requirement for receipts for clothing purchased using funds provided specifically to purchase clothing (clothing allowance). There is no provision to reimburse foster families who spend more than the stipend provided for the care of the child.

COMMENT #36: Rule XXVIII(4) (37.51.810) should be changed to say that foster parents must provide the clothing receipts to the social worker within 30 days of receiving the clothing allowance and provide the inventory list in the same 30 days. The inventory list should be provided when a child leaves the home. If the foster parent fails to comply with this rule, then the foster parent should have to return the money to the department so the department can issue the clothing allowance to



foster parents who will buy clothing for the foster child. If foster parents fail to purchase clothing for the foster child, their license can and should be revoked. Why do we allow foster parents to keep the money and not return it if they do not buy the clothes? There needs to be enforcement of the current rules and the new rules.

RESPONSE: Requiring clothing receipts and the inventory list within 30 days is unnecessarily restrictive. The clothing allowance may not have been spent within 30 days of receipt in every case. Foster parents who do not use the clothing allowance for the child for whom it was intended may face negative licensing action. Rule X allows the department to take negative licensing action against a foster parent who does not use foster care payments for the support of the foster child.

COMMENT #37: Inventory of the child's clothing when they come into foster care is possible due to the fact that there is usually little or nothing to inventory. Adding to the inventory each time a purchase is made is impossible and too daunting a task due to the need for so much and the fact that you are adding to the supply constantly.

RESPONSE: While keeping an inventory of child's clothing and possessions will take time, the department believes that an inventory is needed to ensure that the child's personal clothing and possessions are clearly identifiable. Having an inventory increases the likelihood that the clothing and possessions will be sent with the child. By contract, therapeutic foster parents are currently required to inventory and maintain an inventory of the child's clothing.

COMMENT #38: Sending everything that was purchased and added to the inventory at the time the child is placed elsewhere or returned home is impossible due to the fact that they have grown out of most of it and it has been passed on to someone else. I do not feel that I should have to save outgrown or worn out clothing to make sure that it is passed on with them.

RESPONSE: Language in the rule has been amended to clarify the expectation regarding worn or outgrown clothing. Foster parents must note on the inventory if items are outgrown, worn, or have been lost. Worn clothing may be disposed and outgrown clothing passed on to another child. However, foster parents should not dispose of clothing or other possessions that came with the child from the child's home without approval from the child's social worker.

COMMENT #39: I have numerous children, not all from the same family. It would be near impossible to have the receipts for each child separate. If there are foster parents not providing clothing or the essentials then it should be addressed with those parents. The rest of us who are doing a good job of providing need to be rewarded by not being bookkeepers for the department.

RESPONSE: The rule has been amended to require receipts only for clothing purchased with funds specifically provided for clothing (clothing allowance). The cost of other clothing which has been purchased with funds from the maintenance

payment is to be noted on the inventory, but maintaining receipts for all clothing is no longer required.

COMMENT #40: Keeping records for clothing purchased from a clothing allowance is reasonable.

RESPONSE: The rule has been changed to require that receipts are required only for clothing purchased with a clothing allowance.

RULE XXX (37.51.816) YOUTH FOSTER HOMES: SLEEPING ARRANGEMENTS AND REQUIREMENTS

COMMENT #41: Does Rule XXX(2) (37.51.816) require that sleeping areas have to meet egress window requirements?

RESPONSE: The department is not requiring that egress window requirements be met in this situation.

COMMENT #42: How about just requiring approval by the social work supervisor and the licensing worker for a child over 24 months of age to routinely sleep in the same room with an adult?

RESPONSE: The department believes that this decision is best made by the licensing supervisor.

COMMENT #43: Guardrails used until the child is how old? I can't imagine having a guardrail up for a 13 year old.

RESPONSE: The rule does not specify an age at which guardrails no longer need to be used and the department sees no reason to add an age.

COMMENT #44: A "designee" in addition to regional administrator should be added to Rule XXX as a person authorized to make an exception to a kinship home.

RESPONSE: The department's position is that the regional administrator is the appropriate person to grant an exception.

COMMENT #45: The licensing worker should decide on the number of bunks on a bunk-bed. There are families who have three bunks and they are very safe with their use and who sleeps in the top bunk. An exception should be made which allows a three tier bunk-bed if the height does not exceed the height of a double bunk-bed.

RESPONSE: The department disagrees that the number of bunks on a bunk bed should be at the discretion of the licensing worker. The department has set this requirement based upon safety concerns regarding the height of bunk beds. However, having three bunks within the vertical space generally provided for two

raises concerns regarding crowding and ventilation. The department is adopting the rule as proposed.

RULE XXXII (37.51.603) YOUTH FOSTER HOMES: THERAPEUTIC FOSTER HOMES

COMMENT #46: Rule XXXII (37.51.603) states that therapeutic foster parents must be available 24/7 for supervision. The definition refers to "availability" as usually two adult parents. There are many excellent, single therapeutic foster parents and they have the need to be employed outside the home. Therapeutic foster parents cannot rely on their stipend as a source of income. How is availability defined?

RESPONSE: There is not a definition in the rules that refers to availability as usually two parents. There is no requirement that a therapeutic foster home must be a two parent home. Therapeutic foster parents must be available by phone or able to come to the school, day care, or other setting when requested, and resume direct supervision of the child or take the child home if warranted.

RULE XXXIII (37.51.825) YOUTH FOSTER HOMES: PHYSICAL CARE OR CHILDREN

COMMENT #47: Rule XXXIII(4) (37.51.825) should be removed. Studies have proven that children have not suffered because their parents work. This rule would cut out professional people who have the resources to comply with what the department requires and would result in a higher rate of stress and burnout when one parent has to take care of a therapeutic foster child 24/7. In many areas of the state it has been difficult to recruit enough foster parents to meet the demand. In allowing this rule to stand, it would make it even more difficult to recruit new foster parents.

RESPONSE: The rule allows for an exception to be made by the regional administrator that would allow a preschool age child to be placed in a therapeutic foster home in which the parent or parents were employed. In situations where preschool age children have such high needs that therapeutic foster care is required, careful consideration needs to be made regarding the appropriateness of day care to allow a parent to work.

COMMENT #48: A minimum of only four hours a day of child care on school vacations and summer break is often not enough to allow the treatment parents to work and the youth's supervision needs to be met. Consideration should be given to increasing the amount of time.

RESPONSE: The rule does not limit child care to four hours a day for all children. The rule allows more than four hours per day if approved by the regional administrator.

COMMENT #49: There is inconsistency from region to region regarding the

processing of written approval of the department regional administrator. We recommend that "or designee" be added to the statement in (4) and that a standard form be created for these requests.

RESPONSE: The department agrees that development of a standard form would be beneficial for all parties and will develop such a form. However, if exceptions can only be granted by the regional administrator greater consistency can be maintained, therefore designee will not be added to the rules.

COMMENT #50: Many foster children need the socialization, positive environment, and learning opportunities of a good day care. Many children in therapeutic foster care are behind academically and need any learning opportunity they can take advantage of. Most children in society today are in day care.

RESPONSE: The department concurs that day care can be a positive experience for a child. However, for a child whose needs are such that therapeutic foster care is required, careful assessment needs to be made as to whether the child will receive the therapeutic services that are needed and being paid for if the child is in a day care setting more than four hours per day. The availability of day care setting with sufficient staff to child ratios and staff trained to manage a child with the therapeutic needs varies greatly.

COMMENT #51: In some locations, it is impossible to get a dental exam within the time limited stated. No dentist will accept Medicaid so foster parents have to travel to the Ronald McDonald House to obtain services. The rule should be altered to allow for this type of situation.

RESPONSE: Rule XXXIII(5) (37.51.825) has been deleted and (4) amended to reflect that the required EPSDT screening should include a dental assessment. Foster parents, in consultation with the child's social worker, are responsible for arranging for follow-up services, including dental care, identified as needed during the EPSDT exam.

COMMENT #52: Does "inaccessible to children" mean secured with a key lock?

RESPONSE: No, a key lock is not required although depending on the ages and behaviors of the children in care, it may be needed to ensure that medication is truly in a place inaccessible to children.

COMMENT #53: Rule XXXIII(11) (37.51.825) says that the medical and immunization history of the child will be recorded on forms provided by the department. Will the department still be using the blue forms, just with the understanding that the exemptions provided on the forms do not apply to foster care?

RESPONSE: Rule XXXIII (37.51.825) applies to children placed in foster homes. Section (11) of the rule has been withdrawn. The department is not specifying on

which form immunizations for foster children are to be recorded.

COMMENT #54: Does exposure to second hand smoke mean the lit cigarette or can smoke in furniture, drapes, etc., be considered second hand smoke?

RESPONSE: As defined in Rule II, both the smoke from the end of a lit cigarette, pipe, or cigar and the smoke exhaled by smokers is second hand smoke. Second hand smoke can remain in the air for days, even when it is no longer visible and the air in the home appears clear. The smoky smell may be smoke in the air that is not visible rather than smoke in drapes or other furnishings.

#### RULE XXXIV - YOUTH FOSTER HOMES; DISCIPLINE

COMMENT #55: Rule XXXIV (37.51.826), on discipline, would be easier to understand if (2) just addressed physical discipline. The spanking issue is such a big one; it almost needs to stand alone.

RESPONSE: The department concurs and has separated (2) into two sections. (2) will pertain to physical punishment and the department has adopted a new section (3) pertaining to other disciplinary techniques. All other following portions of the rule have been renumbered to accommodate this change.

#### RULE XXXV (37.51.901) YOUTH FOSTER HOMES: ENVIRONMENTAL AND SAFETY REQUIREMENTS

COMMENT #56: While protection of the foster child is the priority, it is difficult to protect children from real threats and impossible to protect them from any threat. Rule XXXV(6) (37.51.901) is neither reasonable nor enforceable. Foster parents cannot control all activities in other homes in the immediate neighborhood or the larger neighboring area. Adding language such as foster parents "are expected to be observant and to exercise reasonable caution" and/or "must do everything in their power" to protect any foster child would make this more palatable.

RESPONSE: The department concurs that the proposed language was too broad and has amended the language in the rule.

COMMENT #57: Does Rule XXXV (37.51.901) require that foster parents always have to go to the Department's Public Health and Safety Division in Helena to have their water tested? Can we go to a local business?

RESPONSE: The department has amended the proposed rule to require that water be tested by the Department of Public Health and Human Services or by another certified drinking water laboratory. Foster parents can obtain instructions and collection supplies from their local county sanitarian, by stopping by the department's environmental laboratory, in room B-204 in the Cogswell Building at 1400 Broadway in Helena or by contacting the environmental laboratory and requesting that supplies and instructions be sent to them. The environmental laboratory will also provide a

current list of laboratories certified to conduct drinking water analyses upon request.

COMMENT #58: If a family has water delivered or uses bottled water for cooking and drinking, can the well test be waived?

RESPONSE: The rule does not include a provision for an exception to the well water testing. If well water is used, the test is required.

COMMENT #59: Who pays for the test?

RESPONSE: The foster parent is responsible for paying for well water testing.

COMMENT #60: Is there a standard process for all counties statewide?

RESPONSE: The rule requires that all well water testing be conducted by the department or by a certified drinking water laboratory. There is a standard process for submitting well water samples.

COMMENT #61: How will a foster parent be expected to enforce this rule that children shall not be exposed to paint containing lead in excess of .06%? How does a person know if a house has lead based paint? Is this required for all existing paint or new paint? Does this mean that families living in older homes with old paint cannot be licensed?

RESPONSE: If a home was built prior to 1978, there is good chance that lead paint was used in the home. Homes built before 1960 are likely to have the most lead paint. Lead paint is most often found on windows, doors, trim, railings, porches, and outside walls. Any home in which lead based paint may have been used should be tested. Lead-based paint is a major source of lead poisoning for children and can also affect adults. Lead poisoning in children can cause irreversible brain damage and can impair mental functioning.

COMMENT #62: What is exposure?

RESPONSE: A child may be exposed to unsafe levels of lead by breathing or swallowing lead dust especially during renovations that disturb painted surfaces, by putting their hands or other objects covered with lead dust in their mouths, by eating soil or paint chips containing lead or by drinking water which contains high levels of lead. The rule is being amended to require that children be protected from exposure to any unsafe level of lead. Information on protecting children from lead poisoning and other information regarding lead is available by calling 1-800-424-LEAD (424-5323) and at [www.epa.gov/lead](http://www.epa.gov/lead) or [www.hud.gov/offices/lead](http://www.hud.gov/offices/lead).

COMMENT #63: How does one test for lead paint?

RESPONSE: The best way to test for lead paint is to hire a testing professional who will use a range of methods including a visual inspection of the condition and

location of the paint and lab tests of samples of paint. The National Lead Information Center (NLIC) 1-800-424-LEAD (424-5323) can provide a list of contacts.

COMMENT #64: In Rule XXXV(12) (37.51.901) do the foster parents need to have documentation that their dogs have current rabies shots?

RESPONSE: The rule does not specifically require that dogs must have rabies shots.

COMMENT #65: Clarification is requested as to what is considered to be actions and any resulting injuries that may be caused by an animal allowed in or around the foster home. It appears that this rule is neither reasonable nor enforceable.

RESPONSE: Foster parents are expected to provide supervision for every child placed in a foster home. If a foster child is harmed by an animal that had access to the child or the child to the animal without the knowledge of the foster parents or if the foster parents were not providing adequate supervision, the foster parents are responsible.

COMMENT #66: In Rule XXXV(13) (37.51.901), is a trigger lock ok as far as the requirement of kept in locked storage?

RESPONSE: No, a trigger lock does not meet the requirements of this rule.

COMMENT #67: Should hot tubs be included in Rule XXXV(16) (37.51.901)?

RESPONSE: Hot tubs should have been included and have been added to the rule.

COMMENT #68: To list these as high risk activities for all families is simply not feasible or accurate. A child can be hurt by swallowing a Lego, surely we will not write a rule about Legos. Foster care is about including children in normal family activities, not excluding them because there are unique rules for a foster child or children.

COMMENT #69: The statement "not limited to" opens up the gamut of potentially injurious activities. What about swimming, river bank and lake fishing, snow skiing, water skiing, scuba diving, snorkeling, ice fishing, ice skating, skateboarding, or horseback riding? Who decides? Cultural competence requires acknowledgement that our culture is more than our skin color, language, or ethnic background. Our culture is the beliefs, values, and traditions of each family. Montana has unique and important activities that reflect our values and our beliefs. We have families whose traditions are based around fall hunting trips, horseback riding, and snowmobiling. A restriction on certain activities such as horseback riding and hunting specifically targets Native American culture, foster families, and restricts Indian children from experiencing their culture.

COMMENT #70: The department needs to have respite available to foster families for those children that are not allowed to participate with the family in high risk activities. We farm and ranch and therefore four wheelers, motorcycles, and such are part of the normal routine. If they are not allowed to participate, there needs to be some way to provide care while the rest of us are working. The children who are with us enjoy these activities and are also paid well for working on the ranch. I understand the liability of these activities but also understand that I am not giving up my life to be a foster parent, only volunteering with a stipend to help children in need.

RESPONSE TO COMMENTS #68, #69, AND #70: Language in Rule XXXV (37.51.901) has been changed to make the intent clearer. The intent is to include the legal custodian in decision making and to obtain permission from the legal custodian before a foster child in the care or custody of the department is allowed to participate in activities that are considered to have a high risk of injury associated with them. The rule was not and is not intended to limit activities of foster families, to restrict all foster children from participating in certain activities, or to target Native American families or children. The department has agreed to develop a form that can be used by foster parents to indicate what activities they would like the child to be able to participate in. The community social worker supervisor for the child will determine if consent from the birth parents is needed. If a child is not in the care or custody of the department, the foster parent must work with the agency supervising the child's placement to ensure that permission regarding high risk activities is obtained.

COMMENT #71: Why is the licensing supervisor the best person to give consent? This person does not even know the child. Why not give authority to the treatment team to approve the activities? A department social worker or staff person is part of that team.

RESPONSE: The rule has been amended to require that the community social worker supervisor for a child in the care or custody of the department will determine if consent from the birth parents is needed. If a child is not in the care or custody of the department, the foster parent must work with the agency supervising the child's placement to ensure that permission regarding high risk activities is obtained. While involving the treatment team for children in therapeutic foster care in assessing appropriate activities for a child is encouraged, the treatment team does not have the authority to consent to such activities.

#### RULE XXXVI (37.51.902) YOUTH FOSTER HOMES: FIRE SAFETY REQUIREMENTS

COMMENT #72: Does Rule XXXVI (37.51.902) require a smoke detector in every bedroom or only bedrooms in which foster children are sleeping?

RESPONSE: A smoke detector is required in every bedroom in the foster home.



COMMENT #73: Smoke detectors should not be required in the bedrooms but should be required in the kitchen which is more prone to fires.

RESPONSE: In addition to having a smoke detector on each floor of a home, smoke detectors are required to be located in bedrooms and the area outside of bedrooms because most deaths and injuries occur in fires that begin at night when occupants of a home are asleep. The department did consult with the Fire Prevention and Investigation Section of the Department of Justice, formerly the State Fire Marshal's office, when drafting this rule.

COMMENT #74: What are the mounting requirements for fire extinguishers?

RESPONSE: The fire extinguisher should be at least 4 inches from the floor with top of the fire extinguisher no more than 60 inches from the floor. It is recommended that fire extinguishers be located near outside exit doors.

COMMENT #75: To comply with Rule XXXVI (37.51.902), do licensing workers need to ask for a certificate that says the woodburning stove, pellet stove or fireplace meets building codes.

RESPONSE: If the stove or fireplace was installed after the foster parents moved to the home, the licensing worker should ask if the stove or fireplace was inspected after the installation, and request a copy of the inspection. If the stove or fireplace was installed prior to the foster parents moving to the home, the licensing worker should ask if a home inspection was completed, and request a copy of the inspection.

#### RULE XXXVII (37.51.1001) YOUTH FOSTER HOMES: TRANSPORTATION

COMMENT #76: It makes sense in Rule XXXVII (37.51.1001) to get permission to take a foster child out-of-state or the country, but why the county? Providers serve regionally and have many foster homes and respite providers live in various counties. Foster families have friends in and family in other counties. Often families live in one county and work and shop in another. It is not uncommon for youth to attend school in a county adjacent to their home county. This rule is too restrictive and does not take into consideration the special circumstances of rural communities.

RESPONSE: For many years, foster parents who accept children who are in the care or custody of the department have been expected to obtain permission before taking the foster child out-of-county. The expectation was never in rule, however. In instances where a family routinely travels to another county, e.g., a foster family who lives in Jefferson County and travels to Lewis and Clark County regularly, an authorization for multiple day trips may be used. Foster parents are not expected to request authorization for every trip.

#### RULE XXXVIII (37.51.1401) YOUTH FOSTER HOMES: REQUIRED TRAINING

COMMENT #77: Training required under the rules should be limited to actual training seminars. Otherwise, some foster parents may just watch "Nanny 911" and count it as training. I have spoken to several foster parents and they feel if training was required, they would do it, but it is easy to say, "I read a book".

RESPONSE: Due to extremely rural locations of some foster parents, requiring that all annual training be obtained by attending formal training seminars would be too prohibitive. There are other recognized options for obtaining quality training.

RULE XLI (37.51.1404) YOUTH FOSTER HOMES: REQUIRED TRAINING FOR THERAPEUTIC FOSTER HOMES

COMMENT #78: Therapeutic foster parents are required to have 18 hours of orientation and preservice training plus an additional 15 hours of training prior to licensure as well as 30 hours of annual training. This rule seems to indicate that each parent has to complete this training which is over 60 hours per year. Does this rule mean that in a two adult family that each parent must achieve 30 hours of training annually? We have lost families who cannot maintain this level of training.

RESPONSE: All foster parents are expected to complete a minimum of 18 hours of orientation and training. Therapeutic foster parents must complete an additional 15 hours of preservice training to assist them in meeting the greater needs of children placed in therapeutic foster homes. The department is required to ensure that foster parents are prepared to meet the needs of children who will be placed with them.

COMMENT #79: Foster parents are held to a higher standard than professionals in the field and are required to have more continuing education units (CEU) in a year than licensed social workers and licensed professional counselors.

RESPONSE: In their professional capacity, licensed social workers and licensed professional counselors do not generally provide full-time foster care to children who have been physically, emotionally, or sexually abused, neglected, abandoned, etc. In addition, licensed social workers and licensed professional counselors have received many hours of training prior to obtaining a license unlike most foster parents, including foster parents who have successfully raised children, but who have had little or no preparation for the challenges of caring for children placed in foster care. The department has amended Rule XLI(2) (37.51.1404) to require that 30 hours of annual training per therapeutic foster home.

COMMENT #80: We have found that if foster parents complete the 15 hours of training when the child is in the home instead of before the child is in the home, there is more benefit.

RESPONSE: While foster parents may be able to apply training more readily when a child is in the home, it is still necessary that a therapeutic foster parent be prepared to meet the child's needs from the day the child is placed in the home.

COMMENT #81: Respite is not included in the rules. Respite parents must also have 30 hours of training and be licensed. Nurses do not have ongoing training requirements. This huge amount of training impedes the ability to get families to be foster parents.

RESPONSE: Respite providers are not a recognized subcategory of youth foster homes. By contract, if respite is provided by someone other than a family member or a person familiar with and known to the child, respite providers are currently required to meet the same requirements as licensed therapeutic foster parents since they are providing care to children placed in therapeutic foster care. The department is willing to work toward establishing rules that specifically address respite and the expectations of respite providers.

COMMENT #82: Does the rule mean that a family that only provides respite must have 33 hours of preservice training in therapeutic interventions? Is each adult required to have 30 hours of annual training?

RESPONSE: A family that provides respite care for a child who is placed in therapeutic foster care must meet the same licensing requirements as a therapeutic foster home. Therapeutic foster parents are each required to have 18 hours of orientation and preservice training and 15 hours of preservice training as described in (2)(a) and (b). Thirty hours of annual training are required per therapeutic foster home, not per foster parent.

COMMENT #83: How much annual training is needed by parents who have been doing foster care for 10 or more years? The department should look at doing a sliding scale of required yearly training based on the number of years of experience the foster family already has.

RESPONSE: The rule does not make a correlation between the number of years a person has provided foster care and the annual training requirement. The number of years that a provider has been caring for foster children does not necessarily translate into less need for training.

/s/ Michelle Maltese  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 22, 2006.